IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL APPEAL NO.447 OF 1994

The State of Maharashtra Appellant

Vs.

Pratap @ Patya Dnyaneshwar Deshmukh Respondent
(Org.accused)

Mr.B.H.Mehta, APP for State.
None for respondent though served.

CORAM: S.S.PARKAR & S.R.SATHE,JJ.
October 08 & 11, 2004.

ORAL JUDGMENT (PER S.S.PARKAR,J.)

1. This appeal is preferred by the State challenging the judgment and order of the Sessions Judge, Raigad-Alibaug dated 10/5/1994 acquitting the respondent-accused of the offences under Sections 302 and 504 of IPC in Sessions Case No.174 of 1989.

2. The prosecution case briefly narrated is as under:

. The incident of assault took place at about 9 p.m. on 10th September 1989 in village Gavan in Taluka Panvel, Dist.Raigad when one Nandkumar Deshmukh was assaulted with a knife in his chest. Deceased Nandkumar was residing with his brother Sudhakar PW 2, their mother and other family members.

Respondent-accused is also resident of the same village. The complainant's sister-in-law i.e. wife's sister by name Alka was also residing with the family of the complainant for some time. She was at that time taking education in 8th standard in High School at Kopar. Alka had complained to complainant Sudhakar that accused used to tease her and take away her compass box and keep his own pen in her compass. He used to also take away pencil from her compass box. The complainant, therefore, had slapped the accused and complained against him to his father. In the morning of the date of incident i.e. 10th September 1989 at about 9 a.m. Manohar Koli PW 3 had complained to Sudhakar that accused had gone to beat him. Sudhakar Deshmukh, therefore, warned the accused not to enter his courtyard. In the evening on the date of incident when the complainant was returning home from ST stop the accused was staring at him in anger and also muttered some words. At about 8 p.m. on the night of the incident few stones were pelted on the roof of the complainant's house. He, therefore, called Bhalchandra Deshmukh who was residing in front of his house and asked him to call brothers of the accused. Thereafter brothers of the accused by name Rajendra and Pralhad along with one

Shrikant Deshmukh went to see the complainant. Complainant informed the brothers of the accused that that morning accused had gone to beat his servant and in the evening he was uttering some words and staring at him and thereafter stones were pelted on his house and, therefore, they should warn the accused. After the said talk the brothers of the accused left and at 9 p.m. accused came in front of the house of the complainant and was enquiring who had gone to his house to call his brothers. Hearing the shouts of accused deceased Nandkumar and complainant Sudhakar along with their mother came out of their house. The accused assaulted Nandkumar with a knife on the left side of his chest and started running away towards Nhava road. Injured Nandkumar was chasing the accused. Complainant Sudhakar as well as his mother also followed Nandkumar. While running after the accused for some distance injured Nandkumar fell down. Sudhakar lifted Nandkumar and also called people. Therefore, his brother and many persons from the locality gathered there. Nandkumar was taken to the hospital at Panvel where he was declared dead. Sudhakar then went to Panvel Police Station and gave information about the incident which was recorded and is Exhibit 17 on record. The accused went to Jasai

Outpost carrying blood stained knife in his hand for the purpose of surrendering to the police. From the said outpost wireless message was sent to Nhava Sheva police station in whose jurisdiction the offence was committed. Even the complaint which was lodged at Panvel police station was sent to Nhava Sheva police station. On receipt of the information on wireless at about 11.45 p.m. entry was made at that police station and jeep was taken to Jasai outpost from where accused was brought to Nhava Sheva police station where he was arrested and the knife and his clothes, which were blood stained, were seized under panchanama. The dead body of Nandkumar was sent for post mortem examination. The clothes of the deceased were attached. Spot panchanama was drawn on the following day and the earth mixed with blood was seized under spot panchanama. All the blood stained articles were sent to the office of C.A. After completion of the investigation charge-sheet came to be filed against the accused and thereafter the case was committed to the Sessions Court, Alibaug.

3. Before the Sessions Court charges were framed for offences under Sections 302 and 504 of IPC to which the accused pleaded not guilty. On behalf of

the prosecution 15 witnesses have been examined who are as follows:

. PW 1 is Pramod Bagul who was the Circle Inspector who had prepared the map of the place of offence. PW 2 is Sudhakar Deshmukh, the brother of the deceased who was an eye witness to the incident and had lodged his complaint. PW 3 is Manohar Koli who has deposed about the incident which took place in the morning of the day of the incident. PW 4 is Vithoba Mhatre, ASI who was attached to Jasai Outpost on the date of the incident and has deposed about the accused having gone to the said outpost at about 11.45 p.m. on the night of the incident and surrendered himself to the police along with blood stained knife. PW 5 Bhagwan Patil was at the relevant time attached to Uran Police Station who had sent wireless message from wireless van at Jasai. PW 6 is Shivaji Deshmukh who had gone to the place of incident immediately after the incident and saw Nandkumar lying in unconscious condition and heard the persons gathered there saying that the accused had assaulted Nandkumar. PW 7 is Bhalchandra Deshmukh who has deposed about the motive and saw accused running away from the place of incident. PW

8 is Shrikant Deshmukh who had seen Rajendra, brother of the accused, beating accused and scolding him in respect of the earlier incident of pelting of stones and immediately thereafter he heard that the accused had assaulted deceased Nandkumar. PW 9 is Laxman Bhagat who has been examined to prove the extra judicial confession made to him by the accused. PW 10 is Alka Bhalerao with whom accused used to play mischief and she had complained about the same to PW 2 Sudhakar. PW 11 is Vijay Deshmukh who had acted as panch for the seizure of blood stained knife and clothes of the accused at Nhava Sheva Police Station under seizure panchanama (Exh. 32). PW 12 is Baban Kadam, Head Constable attached to Panvel Police Station who had recorded the complaint of Sudhakar (Exh.17), made entry in the station diary and informed Nhava Sheva Police Station about the same. PW 13 is ASI Arjun Sathe who was at the relevant time attached to Nhava Sheva Police Station and made entry in the station diary about the receipt of wireless message received from Panvel Police Station as well as the wireless message received from Jasai outpost about the surrender of the accused. PW 14 is Kanhaya Yashvante, the Police Inspector attached to Nhava Sheva Police Station who had investigated the case.

Lastly PW 15 is Dr. Kendre who had performed autopsy on the dead body.

4. The trial Judge, instead of considering the entire evidence on record has only considered the evidence of the eye witness and the medical evidence and has concluded that the evidence of the complainant was not believable as an eye witness and given benefit to the accused and acquitted him. The said order of acquittal is impugned in this appeal filed by the State.

5. This appeal was on board for hearing since 6th September 2004. After the admission of this appeal, summons was served on the accused in the month of May 1995 and his statement under his signature was recorded on 15/5/1995 in which he had stated that his financial position is fairly good and he would engage his own lawyer. The said statement was forwarded along with the forwarding letter dated 16/5/1995 by Nhava Sheva Police Station to this Court. The respondent-accused has however not engaged any lawyer in this appeal. The appeal was on board since last five weeks and, therefore, when the matter reached in its serial order in the absence of any other pair in

the subsequent matters we had commenced hearing on 8th October 2004. Since the accused was not represented in this case we had gone through the entire evidence on record minutely and also the reasoning of the trial Judge, it being also an appeal against acquittal, and after carefully considering the entire evidence on record commenced the judgment in this case following the ratio of the judgment of a three Judge Bench of the Supreme Court in the case of Bani Singh v. State of U.P. reported in **1996 Cr.L.J. 3491 (S.C.)**.

6. The trial Court has acquitted the respondent-accused by disbelieving the evidence of eye witness on the ground that the eye witness deliberately changed the scene of offence to show that he was an eye witness to the incident . His evidence is said to be inconsistent with the medical evidence and the trial Court has doubted the possibility of the deceased having been assaulted initially in the courtyard of the complainant. Having disbelieved the complainant Sudhakar PW 2 as an eye witness to the incident the trial Court acquitted the accused without considering the other evidence on record which corroborates the evidence of

the eye witness and is independently capable of being the basis for the conviction of the respondent-accused.

7. On behalf of the prosecution firstly evidence has been led to prove the motive against the accused. Secondly there is evidence of eye witness who is complainant Sudhakar, the brother of the deceased. The prosecution has also led the evidence of other witnesses who were residents of the same area where incident took place, who had come on the scene immediately after the incident took place hearing the commotion outside their houses and heard the persons, including the complainant, already assembled there, saying that the accused had assaulted the deceased. Fourthly there is unassailable evidence of the police officers of three police stations, including Jasai outpost where, on the night of the incident, the accused had surrendered along with blood stained knife and blood stained clothes on his person. Since the offence was committed in the jurisdiction of Nhava Sheva Police Station, there is evidence of wireless message having been received by Nhava Sheva Police Station pursuant to which the police officers went in police jeep to Jasai outpost and brought the

accused to Nhava Sheva Police Station where he was arrested and the blood stained knife and the clothes were seized under panchanama. On the night of the incident after taking the deceased to the hospital at Panvel where he was declared dead before admission, the brother of the deceased went to Panvel Police Station and gave his complaint against the accused which was transferred to Nhava Sheva Police Station as the offence was committed within the jurisdiction of that police station. There is evidence of wireless message having been sent from Panvel Police Station to Nhava Sheva Police Station about the complaint lodged by PW 2 and the entries are made in the station diary of the respective police stations and the outpost recording the same. As per the CA report (Exh.40) the blood found on the clothes of the deceased was of "B" group which was also found on the clothes of the accused and knife surrendered by him. The said evidence also supports the prosecution case that it was the accused who had committed the murder of the deceased.

8. PW 2 Sudhakar Deshmukh, brother of the deceased who had lodged FIR in this case against the accused on the night of the incident has deposed that

he was residing in the village Gavan along with his deceased brother Nandkumar, mother, his wife and wife's sister Alka. He knew the accused since his childhood who is the resident of his own village. He had married Alka's sister. Alka was 14 years old and was staying in his house and attending high school at Kopar in 8th standard before the incident. According to him accused used to tease his sister-in-law Alka about which Alka had complained to him. Accused used to take away her compass box and keep his pen in it and sometime take away her pencil from the compass box. Previously on the complaint of Alka, Sudhakar had slapped the accused and had taken the accused to his father who was residing in ST quarters and complained to him against the accused. On 10th September 1989 at 9 a.m. PW 3 Manohar Koli who used to do business in the grocery articles along with the complainant had complained to him that accused had gone to beat him. Sudhakar went out of his house and had warned the accused that if he entered his courtyard it would not be proper for him. Thereafter accused left. In the evening of 10/9/1989 when he was returning home he had seen accused staring at him in anger. At about 8 p.m. on the night of incident some stones were pelted on the roof of his house and,

therefore, he asked Bhalchandra Deshmukh, who was staying in front of his own house, to call brothers of the accused by name Rajendra and Pralhad. When both the brothers went to see complainant along with one Shrikant Deshmukh, Sudhakar told them about the morning incident when accused had gone to beat his servant and stones were pelted on his house in the evening and, therefore, he wanted them to warn the accused. Thereafter at about 9 p.m. when he along with his brothers were sitting in their house, accused came in front of their house and was asking who had gone to call his brothers. Hearing the accused Nandkumar went out in the courtyard followed by witness Sudhakar and their mother. The accused immediately stabbed Nandkumar with a knife on the left side of his chest and ran away towards Nhava road. Nandkumar followed the accused. Witness also went after them followed by their mother. After going some distance Nandkumar fell on the ground. Witness gave him support and gave call to other persons in response to which many persons collected there including Moreshwar Deshmukh and Tukaram. Nandkumar was taken to the hospital in the car of one Dilip Deshmukh to Panvel hospital which is about 15 Kms. away from the said village. In the hospital,

after examining Nandkumar, doctor declared him dead. The witness went to Panvel police station and lodged his complaint (Exh.17). His evidence about motive has been directly corroborated by other witnesses while his evidence about the assault by accused has been indirectly corroborated by some witnesses to which reference will be made at later stage.

9. As far as motive is concerned the evidence of PW 3 Manohar Koli is led by the prosecution. He has deposed that at about 9 a.m. on 10/9/1989 while going to the house of complainant Sudhakar accused was teasing him and, therefore, he told Sudhakar about it. Sudhakar asked the accused to go away and hence accused left the place. Then there is evidence of PW 7 Bhalchandra Deshmukh who has also been referred to by PW 2 Sudhakar in his evidence. This witness has deposed that his house is hardly 2-3 minutes' walk away from the house of accused. On the night of incident at about 8 p.m. complainant Sudhakar called him and asked him to call brothers of the accused. Accordingly two brothers of the accused, Pralhad and Rajendra went to the house of Sudhakar. At about 9 p.m. when he heard somebody abusing, he came on the road outside his house. That

time he saw accused running away and was being followed by deceased Nandkumar and complainant Sudhakar. Nandkumar fell down near the ground near Datta Mandir and was bleeding from his chest and had become unconscious. Thereafter Nandkumar was taken to the hospital. Thus he corroborates the evidence of complainant Sudhakar that an hour before the incident of assault Sudhakar had sent for the brothers of accused. He had also seen the accused running away at the time of incident followed by injured Nandkumar and complainant Sudhakar.

10. PW 8 Shrikant Deshmukh also corroborates complainant Sudhakar and PW 7 Bhalchandra. He deposed that when he was in the house of Dnyaneshwar Deshmukh for aarti at the time of Ganesh festival, PW 7 had gone there and called Rajendra and Pralhad, brothers of the accused to the complainant's house. The witness also went to the house of the complainant. In his presence Sudhakar had told Rajendra and Pralhad about the accused having stared at him in anger and pelting of stones on his house. Thereafter both the brothers of the accused went to their house. He has also deposed that when he went out after finishing his meals he saw Rajendra beating

accused and asking him not to misbehave. Accused abused his brother Rajendra and went out of his house within five minutes thereafter. At about 9 p.m. he heard that accused had assaulted Nandkumar Deshmukh. Thus the earlier incident which took place between 8 and 9 p.m., i.e. just one and half hour before the incident of assault, is corroborated by the evidence of PWs 7 and 8.

11. The prosecution has also led the evidence of Alka, sister-in-law of complainant Sudhakar. She has deposed that she was residing in village Gavan with PW 2 and his wife and was attending school at Gavan, Kopar. She has also deposed about the accused having snatched her compass box and given her pen which she had disclosed to complainant Sudhakar and on hearing that complainant Sudhakar had beaten accused in the month of April 1989. She was studying in 8th standard in April 1989. After her April examination she had gone back to her own village Nehari and had discontinued education. Thus Alka also corroborates the evidence of complainant Sudhakar about accused teasing Alka. Thus the circumstance of motive has been proved by the prosecution not only by the evidence of complainant Sudhakar but also his

sister-in-law Alka and PWs 7 and 8 who were residing in the vicinity of the complainant and the accused. PW 7 had also seen the accused running away immediately after the assault. PW 8 had come out of his house immediately after the incident and heard people saying that accused had assaulted Nandkumar Deshmukh. PW 6 Shivaji Deshmukh who was the resident of village Gavan has also deposed that when he came out after hearing the commotion and went to the spot between 9 and 9.45 p.m. Nandkumar was unconscious and people who had collected there were saying that accused had assaulted him.

12. This evidence is further corroborated by the immediate complaint lodged by complainant Sudhakar which is Exhibit 17. In that complaint all these earlier incidents constituting motive have been mentioned. The complaint also gives the particulars of incident of assault and corroborates the complainant in that respect also. In the complaint there is mention about the accused playing mischief with complainant's sister-in-law Alka and that he had earlier beaten and warned accused on the complaint of Alka. It also mentions about pelting of stones on the house of the complainant about which he had

enquired with the accused. The complainant has then mentioned that about 9 p.m. on the date of the incident accused had gone near the house of the complainant and was abusing him from his courtyard. Therefore, his brother Nandkumar opened the door of the house and went out. He and his mother also followed Nandkumar. Accused stabbed Nandkumar in his chest with knife and when he was trying to run away Nandkumar ran after him to nab him but Nandkumar fell down after going some distance.

13. This evidence of the eye witnesses as regards the assault is also corroborated by the evidence of PW 15 Dr.Kendre who had performed post-mortem on the dead body. Dr.Kendre had found following external injury on the dead body:

> (1) Stab injury over left chest front upper medial quadrant of breast above transverse line of just nipple to sturnm. It was 1" x 1/4" x cavity deep. It was 2" away mediary from nipple 1-1/4" laterally from central line and 3-1/2" below from medial end of clavicle. Direction of wound was left to right direction.

On internal examination he found following injuries:

(1) Fracture of lower side of casto-condral junction of 2nd left rib and upper part of left 3rd rib near sternuln.

(2) Condition of left lung was ruptured and attached with blood clot over substaternal area with haematoma.

(3) Left lung was bluish white. The medial part under sternum attached in clots with haematoma over sub sternal area.

(4) Pericardiam ruptured with attached in haematoma with part of both lungs.

(5) Heart ruptured over medial middle third (M/3) of anterior surface of left ventricle near inter ventricular, septum with empty heard size of injury was 1/2" x 1/4 m. x total deep.

According to the Medical Officer the injured had died within two hours of the last meal and he noticed semi solid contents of food in the stomach. The cause of death given by him is due to shock secondary to rupture of heart due to stab injury. The post mortem report has been produced at Exhibit 45 on record. The age of the injured was about 30 years and he was well nourished. He has also stated that cause of death was due to shock due to loss of blood. He has deposed that it takes some time to cause death after injury and haemorrhage and a person can run upto the distnace of 150 ft. from the place of assault in that condition. In his cross-examination the doctor has stated that right lung was found ruptured and

left lung was in normal condition and in case of rupture of lung a person can talk and brain cannot function after complete oozing of blood in which case he cannot talk. He has admitted in his cross-examination that if the lung is ruptured then it will not function with the same efficiency and the heart will not pump the blood to the body if it is ruptured. He has further deposed that with the injury found on the person of the deceased he could run in conscious condition.

14. Above evidence of the Medical Officer corroborates the evidence of eye witness Sudhakar that accused had assaulted deceased on his chest with a knife. However, the trial Court has observed that there is inconsistency in the evidence of the Medical Officer as according to the trial Court if the heart and the lung of a person is ruptured he could not have run about 150 ft. with that injury. According to the trial Court after the knife was pierced into the chest the injured could not have run after the accused for a distance of 154 ft. which is the distance between the courtyard of the complainant and the place where the deceased was lying where considerable blood had oozed out from the injury of

the deceased. According to the trial Court the incident must not have taken place in the courtyard of the complainant but somewhere near the place where the deceased was found lying and considerable amount of blood was found. According to the trial Court in that case Sudhakar must not be an eye witness because he would have been an eye witness only in case the incident had taken place in his courtyard. The trial Court has also disbelieved the Medical Officer when he has deposed that in that condition the deceased could have run distance of 154 ft. as in that case there ought to have been trail of blood found on the road from the courtyard of the complainant till the place where the injured fell down. According to the Medical Officer most of the blood had oozed out from the body of the deceased and he had also deposed that some blood had accumulated inside the body. One cannot forget that the deceased was wearing banyan and the weapon with which he was assaulted was a long knife the width of which was hardly half inch. If the weapon itself was not having much width, though it was very sharp, the blood could not have come out immediately in such a quantity that it would leave its trail on the road passed by the deceased which was moments after the assault on him.

15. It is common knowledge that in case of stabbing whether in the chest or in the abdomen, the first thing the injured does in his natural reaction is to cover the injury with his palm. If the weapon itself is hardly having half an inch width and his body was covered with banyan, nicker and lungi and when he runs naturally in standing position, the blood was not expected to leave a track on the road because a small quantity of blood which comes out initially will be absorbed by his clothes which included even a lungi. Initially i.e. moments after the assault the blood was not expected to come out in a flow which would fall on the ground and, therefore, there was no possibility of the blood falling either in the courtyard or on the way passed by the injured before he fell on the ground. The fact that the clothes of the deceased were stated to be blood stained and large amount of blood was found on the place where he fell down would also indicate that whatever little amount of blood which came out initially immediately after the assault could not have fallen on the ground because most of the blood was found on the clothes of the deceased and at the place where he had fallen down. The distance which

the deceased is stated to have run must have been covered within few seconds and, therefore, the blood was not likely to have fallen in the courtyard or on the way while chasing the accused.

16. When the deceased opened the door pursuant to the abuses hurled by the accused naturally complainant, who was vitally concerned with the earlier incidents with the accused, must have also come out of his house soon after hearing the abuses of the accused. It was the complainant who had previously slapped the accused who had teased his sister-in-law and it was the complainant who had complained to the brothers of accused about accused pelting stones on his house and about the accused having stared at him in anger that evening while returning home. The complainant, therefore, would not sit in the house complacently after hearing the abuses of the accused and allow only his brother, the deceased, to go out pursuant to the abuses heard from the accused. He would naturally rush outside his house immediately following his brother Nandkumar and, therefore, could have seen this incident of assault on his brother by the accused as a natural eye witness. The fact that it was the complainant

who immediately took his brother to the hospital at Panvel and after he was declared dead went to Panvel police station and lodged his complaint giving all the particulars and details cannot be branded as a false eye witness when his evidence is not only corroborated by other witnesses but also by other circumstances on record which shall be dealt with hereinafter.

17. The trial Court was wrong, to begin with, in observing that Sudhakar was an interested witness and was likely to falsely implicate the accused who was his enemy in place of real culprit when he was not sure about the identity of the assailant. As observed earlier, Sudhakar was a natural eye witness because both the brothers, the deceased as well as Sudhakar, were residing in the same house. If the accused was enemy of Sudhakar he would not sit complacently in his house after hearing the abuses hurled by the accused and allow his brother to go out when about half an hour before that he had complained to the brothers of the accused about latter's conduct. To discard the evidence of a relation in a murder case as an interested witness has since long been deprecated by the Supreme Court and high courts.

A relation is not likely to implicate an accused in a murder case leaving the real culprit free. The trial Court has wrongly observed that the prosecution case that accused had been beaten and scolded by his own brothers was disclosed for the first time before the Sessions Court by Sudhakar and others. It may be mentioned here that Sudhakar has not even deposed about it. It is important to note that the only witness who has deposed that accused was beaten and scolded by his own brothers is PW 8 Shrikant Deshmukh. Significantly there is no omission in his evidence either put to the witness or to the Investigating Officer PW 14 PI Yashwante. The trial Court has wrongly referred to the evidence of complainant Sudhakar in this respect who has not even deposed about it and wrongly observed that that was disclosed for the first time in the Sessions Court. Thus the trial Court's reasoning is not based on the evidence on record and, therefore, its reasoning can be called perverse. For the reasons given earlier, the observations of the trial Court that there is contradiction with regard to the actual place of scene of offence is also not borne out by the evidence on record. The said observation made only on the ground that the stains of blood or trail of

blood was not found on the way from the courtyard upto the place where Nandkumar was found lying was also absolutely unwarranted.

18. The trial Court has then observed that the prosecution had not led the best possible evidence because the mother of the complainant Sudhakar was not examined. To call the evidence of the mother of the deceased as the best evidence available is itself unjustified because it is the case of the prosecution that mother had followed Sudhakar and being a lady, again being an old lady, she being the mother of the complainant, was not expected to go out of the house even before Sudhakar went out. Naturally, she must have gone out of the house after Sudhakar followed deceased Nandkumar and, therefore, the observation of the trial Court that the evidence of mother could have been the best possible evidence is absolutely unjustified. The trial Court surprisingly appears to have drawn adverse inference against prosecution for not having examined the mother. Similarly adverse inference seems to have been drawn by the trial Court against the prosecution for not examining Moreshwar and Tukaram Deshmukh who had admittedly gone to the place of incident subsequent to Sudhakar on the call

given by him. Those witnesses cannot, therefore, be said to be essential to unfold the prosecution case. Reference made to the earlier decision of the Privy Council and the Supreme Court in that connection are, therefore, absolutely out of context, irrelevant and not applicable in the present case. It is well settled that it is the discretion of the prosecution to decide which witnesses should be examined and it is equally well settled that the prosecution is not expected to multiply the witnesses on the same point especially when none of the witnesses who have not been examined by the trial Court are stated to be eye witnesses to the incident. They had come after the incident in question. We do not find any contradiction in the evidence of the eye witness and the medical evidence. In any case the Court has to go by the direct evidence of the eye witness and cannot discard it merely because there appears to be some inconsistency between the medical evidence and the ocular evidence. We have, however, already held that there is no inconsistency between the ocular evidence and the medical evidence.

19. The observation of the trial Court that there is total absence of other circumstantial evidence is

equally perverse. The trial Judge has not considered the other circumstances on record which amply support the prosecution case about involvement of the accused in the murder of the deceased. The trial Court was, therefore, not justified in observing that non placement of the corroborative evidence would positively create serious infirmity in the prosecution, relying on a judgment of this Court which was not applicable to the facts of the present case. As observed earlier the trial Court, instead of considering all the evidence and the circumstances brought on record has only considered the evidence of eye witness and the medical evidence and has wrongly discarded the evidence of Sudhakar and acquitted the accused.

20. Apart from the evidence of motive, the evidence of eye witness Sudhakar is corroborated by the medical evidence and the evidence of PW 7, who had seen accused running away followed by injured Nandkumar and complainant Sudhakar, and is further corroborated to certain extent by PW 8 who after coming out from his house on hearing the commotion heard persons saying that it was the accused who had assaulted Nandkumar. It cannot, therefore, be said

that the eye witness had falsely named the accused as the assailant immediately within few moments after the incident because he did not see the real assailant but the accused must have been named as assailant only because Sudhakar must have assumed that the deceased was chasing him. There is one more circumstance which ought to have been considered by the trial Court about which the Court appreciating the evidence of witnesses cannot be oblivious. Sudhakar was in his house at the relevant time when the accused was hurling abuses from his courtyard. Like Nandkumar who opened the door and was first to go out, Sudhakar also must have heard and recognised or identified the voice of accused hurling abuses and throwing challenge. Having heard the accused hurling abuses and throwing challenge and immediately thereafter Nandkumar having gone out, the person who had assaulted Nandkumar could not have been other than the accused who had hurled abuses and thrown challenge because of the incident which had taken place about half an hour earlier when Sudhakar had complained to the brothers of the accused about latter's conduct.

21. The prosecution has also led the evidence to

show that same night within an hour or so after the incident in question the accused had gone to Jasai outpost which is about 3 Kms. from the village Gavan where the incident had taken place. He had gone to that outpost with a blood stained knife in his hand to surrender to the police. Since as per the facts disclosed by the accused the offence had taken place in the jurisdiction of Nhava Sheva police station, wireless message was sent to that police station pursuant to which jeep was brought by the Police Officer from that police station at that outpost and accused was taken to Nhava Sheva Police Station. In that connection the prosecution has led the evidence of PW 4 Vithoba Mhatre who was at that time attached to Jasai outpost. According to his evidence at about 11.45 p.m. on 10/9/1989 i.e. the date of the incident accused went there with a knife in his hand and he told him that he had assaulted Nandkumar of Gavan village by means of a knife. Since that offence was committed in the jurisdiction of Nhava Sheva police station he had sent wireless message to Nhava Sheva Police Station from wireless van which was at that time standing at some distance from the chowki. Pursuant to his wireless message PSI Raskar from Nhava Sheva Police Station went to the said

outpost in a police jeep. By that time Raskar had learnt about the death of Nandkumar pursuant to the FIR lodged by Sudhakar at Panvel police station which was conveyed to Nhava Sheva police station on wireless. That complaint was lodged after Nandkumar was declared dead in the hospital at Panvel. He had made entry in the register at about 0.5 a.m. He handed over the accused along with knife to PSI Raskar. The witness has also stated that at that time accused was wearing ash coloured full pant and blue coloured T-shirt which he has identified in the Court. He made entry in the register in the station diary at Serial No.255 at 0.5 a.m., which is produced on record as Exh.21, about the wireless message having been sent through operator at Shira. Exhibit 21 mentions what was told to him by the accused. There is also mention that wireless message was sent and accused was handed over to Police Head Constable and constables who had come along with the police jeep. This is corroborated by the corresponding entry made by Nhava Sheva Police Station at 11.45 p.m. on that night which is produced as Exhibit 22. That entry mentions about the wireless message having been received from the operator informing that police station that accused had stated that he had assaulted

Nandkumar with knife and enquiring whether the complaint was lodged at Nhava Sheva police station and to bring the accused from Jasai outpost to that police station pursuant to which PSI Raskar, one Head Constable and two constables were sent.

22. There is no doubt that the confession made by the accused to the police at Jasai outpost is not admissible in evidence, but the fact that the accused had surrendered to the outpost with blood stained knife in his hand can be relied as a relevant circumstance which corroborates the prosecution case including the evidence of eye witness Sudhakar. PW 5 Bhagwan Patil who was attached to Uran Police Station on the night of the incident and was on duty at the relevant time in the wireless van no. Shira-10 has corroborated the fact that at 11.45 hours on that night he had received information from Head Constable Mhatre i.e. P.W. 4 which information he had flashed on wireless to Nhava Sheva police station. Then there is evidence of ASI Arjun Sathe PW 13 who was attached to Nhava Sheva Police Station on the night of the incident. He had received wireless message at about 11.45 p.m. from Jasai outpost from Shira-10 wireless van which is entered at Sr.No.31 in the

station diary and produced at Exhibit 22 and thus corroborates the evidence of PW 4 Mhatre from Jasai outpost that the accused had surrendered to that outpost along with the knife and thereafter message was sent to Nhava Sheva Police Station. After the accused was brought to Nhava Sheva Police Station the knife produced by him and the clothes worn by him were attached under panchanama (Exh.32) which is proved by panch Vijay Deshmukh PW 11. According to his evidence he was called along with other panch at about 12-30 in the midnight on the night between 10/9/1989 and 11/9/1989 where the knife and the clothes of the accused were seized. According to him there were blood stains on the knife. He has deposed that ash coloured pant and blue coloured T-shirt was seen by him. He had also seen blood stains on those clothes. They were seized under panchanama (Exh.32). The seizure panchanama (Exh.32) gives the size and description of the knife. The panchanama also gives the description of the clothes of the deceased which were ash coloured full pant and nylon banyan cum T-shirt of blue colour. There were signs of invisible blood stains on the T-shirt. Even the buckle fitted to the pant of the accused was also attached which was having blood marks.

23. The knife and the clothes of the accused were sent to CA under forwarding letter dated 9/10/1989 (Exh.39) along with the clothes of the deceased and the clothes of witness Sudhakar. As per the CA report dated 6/2/1990 (Exh.40) the knife as well as the clothes of the accused were found stained with blood of group "B" which was also found on the clothes of the deceased. It is significant to note that blood of "B" group was found on the knife seized from the accused. Similarly "B" group blood was found on the full pant, belt and the T-shirt of the accused. Same blood group "B" was found on the clothes of Sudhakar, the eye witness and the complainant, as he had lifted the deceased and taken him to the hospital. The accused has not given any explanation in his 313 statement as to how the blood was found on the knife and his clothes as per the CA report. He has, however, produced pathological laboratory report dated 6/2/1994 which was marked as Article D-1 to show that his blood group was also "B". But in the absence of any explanation by him as to how blood of group "B" was found on his clothes which were seized on the night of incident itself and how blood group "B" was also found on the knife which

was surrendered by him same night, there is no reason to discard this circumstance. It is not the case of the accused that he had received any injury on his person on the date of incident or earlier because of which his own blood was found on his clothes and the knife produced by him.

24. Thus the evidence of complainant is corroborated by the evidence of PWs 3, 6, 7, 8 and 10 as regards the motive and also about the accused running away from the place of incident immediately after the assault. Even if it is held that PW 2 had not seen the actual assault, his evidence that he saw accused running away and deceased Nandkumar chasing him cannot be disbelieved which is also supported by PW 7. PWs 6 and 8 who had come immediately at the scene of offence after the deceased fell on the ground had heard people, who had gathered there, saying that accused had assaulted Nandkumar. This is further corroborated by the medical evidence which shows that Nandkumar had received stab injury in his chest with knife which had pierced in his heart and lung and that after the injury it was possible for Nandkumar to run about 150 ft. It cannot be disputed that it was not impossible for the injured Nandkumar

to run, however slowly, at least some distance if not 154 ft. There is further corroboration to that evidence when the accused surrendered to Jasai outpost same night with blood stained knife in his hand and the same clothes which he was wearing at the time of incident which were found stained with blood of Group "B" which is that of the deceased. The police did not have to hunt for the accused because he had surrendered to the outpost from where wireless message was sent and was taken to Nhava Sheva Police Station. The trial Court has rightly discarded the evidence of PW 9 Laxman Bhagat about the extra judicial confession made to him which was also recorded under Section 164 of Cr.P.C. by the Magistrate, in view of the fact that he has stated in his cross-examination that police had told him that if he gave the said statement he would be allowed to leave the police station otherwise he would be detained.

25. The trial Court not having considered entire evidence on record but having wrongly discarded the evidence of eye witness complainant, without considering the other circumstances and evidence on record which can even independently be the basis of

conviction of the accused, the order of acquittal cannot be sustained. We, however, see no reason to set aside the order of acquittal for offence under Section 504 of IPC.

26. In the result, the appeal is allowed and the order of acquittal recorded by the Sessions Judge, Raigad-Alibag by judgment dated 10/5/1994 in Sessions Case No.174 of 1989 is quashed and set aside and the respondent-accused is convicted for offence under Section 302 of IPC and sentenced to R.I. for life and to pay a fine of Rs.1000/- in default to suffer further imprisonment for two months. The order of acquittal for offence under Section 504 of IPC is, however, confirmed. The respondent-accused shall surrender to his bail bond forthwith. He shall be entitled for set off under Section 428 of Cr.P.C.

(S.S.PARKAR,J.)

(S.R.SATHE,J.)